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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,114	12/01/2003	Adrian Meredith Sunter	IS-US030581	9931
22919	7590	09/14/2005	EXAMINER	
SHINJYU GLOBAL IP COUNSELORS, LLP 1233 20TH STREET, NW, SUITE 700 WASHINGTON, DC 20036-2680				WEEKS, GLORIA R
ART UNIT		PAPER NUMBER		
3721				

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/724,114	SUNTER ET AL.
	Examiner Gloria R. Weeks	Art Unit 3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/21/05
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

***Response to Amendment***

1. This action is in response to Applicants' amendments and arguments received on June 21, 2005, which is deemed fully responsive.

***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (USPN 2,805,639) in view of Kammler et al. (USPN 5,832,700).

In reference to claims 1, 4, 6, 9-11, 14-26, Martin discloses a weighing and flavoring system for producing bags, comprising: a measurer (4); a flavoring apparatus (5d, 8) including an Archimedean screw; and a packager (13). Martin does not disclose the use of a control or setting

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means for checking the quantity of flavored articles after packaging. Kammler et al. teaches a measuring and packaging system having a measurer (30), a check measurer (17) downstream of the measurer (20); vertical form, fill and seal packager; a control or setting means (31) for setting at least one threshold value based on the quantity of articles (column 4 lines 27-31); and a sorter (39). It would have been obvious to one having ordinary skills in the art to modify the system of Martin to include the measuring and packaging system of Kammler et al. for the purpose of ensuring a proper quantity of flavored articles are packaged.

With respect to the claims 2, 3, 5, 7, 8, 12 and 13, the claim limitations are drawn towards the functionality of the setting and control means. Based on Kammler et al. disclosure of using a computer control and setting means, it is found that the control means of Kammler et al. is capable of providing the functions as claimed by Applicant.

#### *Response to Arguments*

5. Applicant's arguments filed June 21, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Martin and Kammler fail to disclose or suggest the comparison of the quantity of the flavored articles with that of the unflavored units, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Martin discloses a setting means (7) capable of controlling the amount of oil (flavoring) placed in the chamber (8) based on the amount of popcorn (product) distributed by the measurer (4) to the chamber (8), which in combination with the check measurer of

Kammler, anticipates applicant's invention as claimed. Kammler is deemed to adequately teach the idea of measuring a quantity of product prior to packaging and confirming the quantity of product post packaging, thereby ensuring proper packaging of a desired amount of product.

As claims 1-19 do not meet the analysis set forth in MPEP 2181 regarding proper 112 6<sup>th</sup> paragraph language (i.e. "means for" or "step for" is not being used, or no function is set forth, or too much structure is set forth), the Examiner assumes that applicant does not wish to invoke 35 USC 112, paragraph 6. Specifically, the phrases "a measurer for", "a flavoring apparatus...for", "a check measurer...for", and a "sorting unit for" of claim 1 lack proper means-plus-function language. Thus, Examiner's rejection of Applicant's invention is drawn to the structural limitations of applicant's invention, not the function.

Applicant also argues that Kammler fails to disclose both a flavored and unflavored product. As Kammler is not the primary reference, Examiner relied upon the teachings of Kammler to disclose the concept of providing a setting means capable of adjusting the product flow of a measurer based on the output of a check measurer downstream of the measurer (Kammler – column 4 lines 22-37). The primary reference, Martin, is cited for its disclosure of a measurer, flavoring apparatus and a setting means. Martin also discloses a desire to solve the problem of sufficiently flavoring a product (Martin – column 1 lines 22-25).

With respect to claims 14 and 20, Applicant has argued that prior art of record does not disclose or suggest adjustment of an additive dispenser. The additive dispenser of Martin clearly discloses a variable speed pump capable of adjusting its flow according to a desired amount of additive.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 8:30 am - 7:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is ~~703-872-9306~~.  
~~571-272-8300~~

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gloria R Weeks  
Examiner  
Art Unit 3721

  
grw  
September 13, 2005

  
LOUIS K. HUYNH  
PRIMARY EXAMINER